

ST 05-4

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC, INC.,

Applicant

**No. 04-ST-0000
IBT #: 0000-0000**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: Marc Muchin, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); Thomas P. Fitzgibbon of McGuire, Woods, for ABC, INC. ("Applicant").

Synopsis:

This matter involves a Second Denial of Sales Tax Exemption application issued by the Department to Applicant on January 5, 2004. Applicant filed a protest to the denial and requested a hearing on the matter. An evidentiary hearing was held on January 19, 2005. After considering the testimony and evidence presented, I recommend that the application be denied.

Findings of Fact:

1. Applicant was incorporated in Illinois as a non-profit corporation in May of 2003.
Tr. p. 9, Dept. Ex. No. 3.

2. The purpose of the organization is to rescue, care for, and find new homes for abandoned, unwanted or mistreated golden retriever dogs. Tr. p. 10.
3. Applicant received a letter from the Internal Revenue Service, dated August 8, 2003, granting it tax-exempt status as a charitable organization described in Section 501(c)(3) of the Internal Revenue Code. *Id.*, App. Ex. No. 9.
4. Applicant accepts any golden retriever dog brought to its door for relinquishment. It requests a \$50 donation from families who are relinquishing a golden retriever, but if the family is unable or unwilling to make a donation, Applicant will accept the dog anyway. Tr. pp. 11, 33.
5. The \$50 donation goes to offset part of the cost of vaccinating the dog, and providing necessary medical care. Tr. p. 34
6. All of the dogs accepted by Applicant are spayed or neutered before adoption, if necessary, at a cost of about \$160 per animal. Tr. pp. 35, 38.
7. Applicant places no obstacles on either relinquishing or adopting families related to race, religion, sex, family status or national origin. Tr. p. 33.
8. Applicant has no capital stock or shareholders. Tr. p. 10.
9. During the 2004-year, Applicant received approximately 29% of its total income from private and public donations and grants.
(\$23,941+\$2,289+\$4,625=\$30,855÷\$107,570). Tr. p. 11, App. Ex. No. 1).
10. During the 2004 year, Applicant received approximately 40% of its total income from the adoption fees it charges people who adopt dogs it has available. Tr. pp. 11, 21, App. Ex. No. 1.
11. Other major sources of revenue are product sales (12% of revenues), event proceeds (13% of revenues) and membership dues (5% of revenues). *Id.*

12. Applicant's total expenses for the 2004-year were \$76,683, the largest item of which was veterinary fees of \$42,473. Tr. p. 12, App. Ex. No. 1.
13. Applicant has no paid employees; volunteers do all of the work. Tr. p. 15
14. During the year 2004, Applicant charged members \$25 dues to cover the cost of printing and distributing four annual newsletters. Tr. p. 15
15. The \$25 annual membership fee can be waived, but no applicant for membership has requested waiver. Tr. pp. 21-22.
16. In return for their membership fee, members receive a newsletter four times per year and 10% discounts on ABC, INC. merchandise such as embroidered clothing. Tr. p. 23.
17. Applicant charges an adoption fee for each dog adopted in the amount of \$275 if the dog is 7 years old or younger, \$225 if the dog is 8 or 9 years old, and \$175 for dogs ten years old or older or dogs that have special needs. Tr. p. 21.
18. The adoption fee is charged because people tend to value something more when they have to pay for it then when they get it for nothing; also, payment of the adoption fee is an indication that the person adopting the dog will be able to afford the annual cost of caring for the dog, which in the case of a dog the size of a golden retriever runs to about \$2,500 per year. Tr. pp. 24, 37.
19. Applicant has arranged for payment plans for its adoption fee, but it has not waived it. Tr. p. 21.
20. Applicant would not adopt a dog to a family that could not afford the adoption fee. Tr. pp. 38-39.
21. All of Applicant's dogs are spayed or neutered before they are adopted out. Tr. p. 38.

22. Some of Applicant's dogs are donated to the Center which takes the dogs to the Women's correctional facility in Illinois where the inmates work with the dogs for 6 to 9 months to train them to be service dogs; one of these dogs was placed with a young man that has cerebral palsy. Tr. pp. 21, 31, App. Ex. No. 6. Some of Applicant's older dogs have been placed with the Assisted Care, which has found that having a dog that actually lives in the facility is beneficial to the patients. Applicant received an adoption for \$175 from Assisted Care for one of the dogs. Tr. pp. 27, 31, App. Ex. No. 5. Applicant also donated a dog to be a search and rescue dog in County Sheriff's Department. Tr. pp. 28, 31, App. Ex. No. 4.
23. Applicant advertised for free heartworm testing in lower income areas of Anywhere where Applicant was aware that people were not getting their dogs tested for the disease. Applicant paid for 30 heartworm tests, treatment for dogs that tested positive, and provided free Heart Guard preventative medication to be given to dogs that tested negative so they would not contract the disease. Tr. pp. 29-30, App. Ex. No. 2.
24. Applicant donated \$2,668 to various animal shelters to have dogs spayed or neutered. Tr. p. 30, App. Ex. No. 3.

Conclusions of Law:

This matter involves the second denial of Applicant's application for a sales tax exemption. The Retailers' Occupation Tax Act sets forth the exemption at issue, in relevant part, as follows:

Exemptions. Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

* * *

(11) Personal property sold to a governmental body, to a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, . . . 35 ILCS 120/2-5.¹

The Department's regulation explains that sales to non-profit organizations and nonprofit societies for the prevention of cruelty to children or animals that are classified as charitable organizations are non-taxable. 86 IL. Admin. Code § 130.2005(k).

The courts have long held that statutory exemptions of property or entities from taxation must be strictly construed in favor of taxation and against exemption. An entity that claims exemption has the burden to clearly prove that it is entitled to an exemption. *Gas Research Institute v. Dept. of Revenue*, 154 Ill.App.3d 340, 507 N.E.2d 141 (1st Dist. 1987). The guidelines for determining whether an entity is exempt from sales tax and use tax are as follows:

- (1) the charity is applied for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare--or in some way reducing the burdens of government; (2) the charitable institution has no capital, capital stock or shareholders, earns no profit or dividends, but rather derives its funds mainly from **public and private charity and holds them in trust for the objects and purposes expressed in its charter; (3) the charitable institution dispenses charity to all who need it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; (4) the fact that the institution's statements and wording of legal documents evidence an intention to use its property exclusively for charitable purposes does not relieve the institution of proving that its property actually and factually is so used; and (5) the term "exclusively used" means the primary purpose for which property is used and not any secondary or

¹ Unless otherwise noted, all statutory references are to the Retailers' Occupation Tax Act (ROTA), 35 ILCS 120/1 *et seq.*, sometimes referred to as *sales tax*. or the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*, sometimes referred to as *use tax*.

incidental purpose. *Wyndemere Retirement Community v. Dept. of Revenue*, 274 Ill.App.3d 455, 459; 654 N.E.2d 608 (2nd Dist. 1995), citing *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 156-57, 233 N.E.2d 525, 537 (1968).²

In the instant case, Applicant accepts for relinquishment any golden retriever dog that is brought to it whether it receives a donation or not. If Applicant were not accepting these animals, they would have to be taken to some other animal welfare facility or public impoundment where they might well be euthanized. It attempts to find suitable homes for the dogs it takes in, and it has donated dogs to be trained as service dogs and, in one case, to be trained for search and rescue work. Therefore, it passes the test of benefiting an indefinite number of people and it reduces a governmental burden by finding suitable homes for animals that otherwise might become the burdens of government.

Applicant passes the test of having no capital stock or shareholders, and no funds inure to the benefit of any individuals. It receives approximately 29% of its income from donations and grants and most of the balance from adoption fees (40%), product sales (12%) and event proceeds (13%). However, the fact that it receives substantial sums from sources other than donations and grants does not necessarily cause it to lose its character because some of the recipients of its benefits are able to pay to do so. *Wyndemere, supra*; *People ex rel. Cannon v. Southern Illinois Hospital*, 404 Ill. 66, 88 N.E.2d 20 (1949).

However, Applicant does not pass the fundamental requirement for an organization to be granted exempt status which is that it must dispense charity to all who need it. Although applicant accepts all dogs brought to it for relinquishment whether a donation is made or not, the record indicates that it will not adopt a dog to any family or private individual who wants one without paying an adoption fee at the time of adoption.

² The court noted that although *Korzen* dealt with a property tax exemption the same rules apply to the sales

Although it will make a payment plan for the fee if the adopting family requests it, the record clearly indicates that it would never waive the adoption fee. However, Applicant did not provide any details as to the criteria considered for payment plans, so I must conclude that it is not a written policy. Jane Doe, Applicant's treasurer, testified that Applicant had not waived an adoption fee. (Tr. p. 21.) John Doe, Applicant's president, testified that placing financial restrictions on adoptive families is necessary for assuring that the families will be able to provide good homes for the dogs. (Tr. p. 38.) However, there was no evidence presented that this presumption is correct. This policy of not waiving the adoption fee for a family or applicant that wants to adopt a golden retriever but cannot afford the adoption fee means that Applicant does not dispense charity for all who need it. Therefore, it fails one of the fundamental tests to qualify for exempt status as a charity. See *Wyndemere, supra*.

In addition, Applicant sells merchandise to members at a 10% discount whereas the general public must pay full price. Also, the record indicates that newsletter is made available only to members. These factors coupled with the adoption fee requirement indicate that Applicant is running a commercial enterprise not unlike other entities that sell dogs.

For the reasons set forth above, I recommend that the sales tax exemption be denied.

Date: 3/ 11/ 2005

Charles E. McClellan
Administrative Law Judge

and use tax.